

Article 2:  
**GENERAL REGULATIONS**

Article 2:**GENERAL REGULATIONS****A. General Effect**

The effect of this Ordinance shall be consonant with the objectives of the Town to assure the orderly subdivision of land and its development, to coordinate the development of streets within and contiguous to any subdivision, to establish adequate provisions for water, sewer, drainage, flood control and other public purposes, to promulgate acceptable physical standards and criteria for subdivision improvements, to provide for dedication of public rights-of-way, and to serve in implementing the adopted Comprehensive Plan, Official Map, Zoning Ordinance and other land use plans.

**B. Prior Approvals**

Nothing in this Ordinance shall be deemed to require any change in or invalidation of final subdivision plats previously approved and of record prior to the effective date of this Ordinance.

**C. Application and Compliance**

1. No person shall divide or subdivide, or cause a subdivision to be made, by deed or plat, of any tract of land located within the Town of Smithfield, except in conformity with the provisions of this Ordinance.
2. Whenever the owner of any tract of land located within the Town desires to subdivide the same, the owner shall submit a plat of the proposed subdivision with reference to known or permanent monuments to the Planning Commission, or its agent, in accordance with the requirements of this Ordinance.
3. No owner shall subdivide land without making and recording a Final Subdivision Plat of such subdivision in the office of the Clerk of the Circuit Court of Isle of Wight County, and no such plat of any subdivision shall be recorded unless and until it shall have been submitted to and approved by the Planning Commission in accordance with the regulations set forth in this Ordinance.
4. No person, shall sell or transfer any land of a subdivision, before a plat of such subdivision has been duly approved, bonded, and recorded as provided herein.

5. This Ordinance bears no relation to any private easement, covenant, agreement or restriction and the responsibility of enforcing such private easement, covenant, agreement or restriction is not implied to any public official.
6. Nothing in this ordinance shall affect the power of a court of equity to order that property be partitioned.
7. All references to any statute, regulation, guideline, manual, or standard shall be to that regulation, guideline, manual, or standard as it exists on the date of adoption of this Ordinance and includes any amendment thereafter or reissue in a subsequent edition.
8. All references to days shall be to "calendar days."

#### **D. Administration and Enforcement**

##### **1. Administration**

The administration and enforcement of this Ordinance shall be vested in the Town Council and the Planning Commission. The Planning and Zoning Administrator is hereby delegated as the agent of the Town Council and Planning Commission and is hereby authorized to administer this ordinance.

- a. The Planning Commission, upon recommendation by the Planning and Zoning Administrator, shall review and act to approve or disapprove Preliminary Subdivision Plats and Final Subdivision Plats.
- b. The Planning Commission, upon recommendation by the Planning and Zoning Administrator, shall review and act to approval or disapprove Public Improvement Plans.
- c. The Town Council, upon recommendation by the Planning and Zoning Administrator, Town Attorney, and Planning Commission, shall review forms of required surety and shall act to approve bonds and subdivision agreements required by this ordinance.

In performance of their respective duties, the Town Council and the Planning Commission shall request and consider the comments of the Planning and Zoning Administrator, the Subdivision Review Committee, the Town Staff, and other applicable public agencies and officials in making recommendations and decisions on all subdivision plats.

**2.     Enforcement**

The Town Council may act through its Planning and Zoning Administrator, duly appointed as provided in the Code of Virginia (1950 as amended) to the extent that the Town Council finds appropriate for the enforcement of this ordinance; provided, however, that no person may act for the Planning Commission in approving or disapproving any Preliminary Subdivision Plat, Final Subdivision Plat, or Public Improvement Plan unless otherwise specifically provided for in this ordinance.

**3.     Minor Subdivisions**

Minor subdivisions of land are recognized where a single lot or parcel of land, which (a) is proposed to be divided into not more than two (2) lots, or (b) where the lot lines of existing lots are proposed to be changed or vacated. No lot(s) which has (have) been divided by utilizing the minor subdivision process may be further subdivided using this process, within a time limit of three (3) years.

With respect to minor subdivisions, any one or more of the requirements of this ordinance may be waived in writing by and at the sole discretion of the Planning and Zoning Administrator provided that such division of land :

- a.     conforms to all applicable zoning ordinance requirements and proffered conditions of zoning;
- b.     does not involve any new public street, road, or easement of access;
- c.     does not offer opportunity to obstruct the floodplain, marshes, rivers of the Town or any planned highway, transportation, public facility, public infrastructure, or public use;
- d.     does not adversely affect any part of the Comprehensive Plan or any other adopted plan; and
- e.     does not in any way violate the intent of this ordinance or other applicable ordinances, agreements or conditions.

A minor subdivision plat, prepared by a certified land surveyor licensed in the State of Virginia, showing the metes and bounds of the lots resulting from a minor subdivision of land under this section shall be presented to the Planning and Zoning Administrator, who shall act to approve or disapprove the plat within thirty (30) days of a complete submission. Upon approval by the Planning and Zoning Administrator, the minor

subdivision plat shall be recorded in the Clerk's Office of the Circuit Court of Isle Wight County, Virginia, within the time period as set forth in this ordinance.

The plat shall include the following surveyor's certification:

*"This minor subdivision known as \_\_\_\_\_ Subdivision is approved by the undersigned pursuant to the Subdivision Ordinance of the Smithfield Town Code and may be admitted to record."*

#### **4. Cluster Subdivisions**

- a. Clustering, an alternative to conventional subdivision practices, is premised on the concept of reducing lot size requirements for the provision of common open space within the development, all in accordance with the zoning districts within the Zoning Ordinance in which clustering is permitted.
- b. The purpose of the cluster method of subdivision is to permit an alternative to standard subdivision design which will promote flexibility of layout and variety of type in residential dwellings, without sacrificing existing per acre dwelling densities or changing the character of the neighborhood, and at the same time preserving open spaces of scenic and use value for common enjoyment.
- c. The use of this optional method of subdivision, and the procedure for plat filing and review, shall be subject to the regulations of the Zoning Ordinance the same as for standard subdivisions, with the following exceptions:
  - i) A detailed proposal setting forth the post-development utilization of open space areas, including covenants, property owners' agreements or other specific documents, showing the ownership of and maintenance and utilization of those areas within the subdivision which are declared to be open spaces for common use, must be submitted and approved before Final Subdivision Plat approval.
  - ii) The proposed method of ownership and maintenance in perpetuity of all common spaces must be acceptable to and approved by the Town Council, and must be set forth in the deed of dedication recorded at the time of recordation of the Final Subdivision Plat.

#### **E. Public Improvements--General**

1. All required improvements shall be installed at the cost of the subdivider, unless Town cost sharing or other means of Town participation are first indicated and approved by the

Town Council. Such agreements shall be formally entered into prior to final subdivision plat approval. All construction and materials shall conform to current Town and state design and construction standards and criteria in effect at the time of subdivision.

2. Any required subdivision bond shall not be released until required construction has been satisfactorily completed, wherein discharge and release of the subdivision bond shall be executed pursuant to Town bonding procedures as outlined herein and in the Zoning Ordinance.

#### **F. Right of Way Additions**

1. Where the adopted Smithfield Comprehensive Plan or any other adopted transportation plans indicates a right-of-way greater than that existing along the boundaries of the subdivision or lot, such additional right of way shall be dedicated to public use on the plat when it is recorded.
2. Where a subdivision has occurred on public streets with less than fifty feet right-of-way width, additional right-of-way shall be dedicated in order that the total public right-of-way shall be no less than fifty (50) feet in width or as designated on the Smithfield Comprehensive Plan or other adopted transportation plan of the Town.

#### **G. Parks, Schools, Open Space and Public Land**

1. In the subdividing of land, consideration shall be given to suitable sites for parks, open spaces, natural areas, schools, and other areas of public use as may be described in the Smithfield Comprehensive Plan or other adopted plan. The location, boundary, and size of such areas should be indicated on the Preliminary Subdivision Plat and Final Subdivision Plat in order that it may be determined if, when, and in what manner such areas will be dedicated to, reserved for, or acquired by the Town for that use.
2. This provision shall not be construed to preclude the reservation or dedication of property for public use not included in the Smithfield Comprehensive Plan or other adopted plan, provided such property is acceptable to the Town for such dedication and maintenance.

**H. Dedications for Public Use**

1. No Final Subdivision Plat showing any public easement or public right-of-way shall be recorded, nor shall any such easement or right-of-way otherwise be accepted for dedication to public use until such dedication shall first be approved, accepted by the Town, and evidence of such approval by signature of the Town Manager shown on the instrument to be recorded.
2. Recordation of the Final Subdivision Plan shall be accompanied by the appropriate deeds of easement.

**I. Pro-Rate Share Funding for Water, Sewer and Drainage Improvements**

A subdivider or developer of land shall pay to the Town Council his pro rata share of the cost of providing reasonable and necessary sewer, water and drainage improvements, located outside the boundary of the property which are necessitated or required, at least in part, by the construction or improvement of the subdivision, provided that:

1. no payment shall be required until the Town establishes a general sewer, water and drainage improvements program and plan for an area having related and common sewer, water and drainage conditions, and within which the property is located or where the Town Council has committed its to such a program, and
2. the program and plan comply with Section 15.2-2243 of the Code of Virginia.

**J. Pro-Rate Share Funding for Off-Site Transportation Improvements**

A subdivider or developer of land may voluntarily contribute and the Town Council may accept funds for off-site road and street improvements substantially generated and reasonably required by the construction or improvement of the subdivision. The determination of whether the need for an improvement is substantially generated by the subdivision shall be made by the Planning Commission. In determining whether the need for an improvement is substantially generated by the subdivision, the Planning Commission shall consider whether:

1. the impact of the subdivision would create a threat to the public health, safety, or welfare if not addressed by the improvement;
2. the improvement is identified in the Smithfield Comprehensive Plan, the Town's Major Street Plan, or official map;

3. the improvement is identified in the Smithfield Capital Improvement Plan;
4. the improvement is identified in the VDOT Six Year Road Plan; and
5. the need generated is more than an incremental effect that would otherwise result, as determined by annual population growth vehicular, traffic or other appropriate criteria.

**K. Waivers, Variances and Substitutions**

1. An applicant may request a waiver, variation or substitution to the requirements for a Preliminary Subdivision Plat, Final Subdivision Plat or Public Improvements Plan. A written request for a waiver, variation, or substitution shall state the rationale and justification for such request together with such alternatives as may be proposed by the applicant or owner.
2. Such request shall be submitted to the Planning and Zoning Administrator with the filing of a Preliminary Subdivision Plat, Final Subdivision Plat or Public Improvements Plan. For each requested individual waiver, variation or substitution, a separate letter of application for the request must be submitted, accompanied by relevant documentation.
3. The Planning Commission, at its sole discretion, may accept the request for waiver, variation or substitution for any requirement in a particular case upon a finding that the waiver, variation or substitute of such requirement would advance the purposes of this ordinance and otherwise serve the public interest in a manner equal to or exceeding the desired effects of the requirements of the ordinance. Alternately, the Planning Commission may recommend a conditional modification to the request or the Planning Commission may deny the request.
4. Approval or conditional approval of a waiver, variation, or substitution shall be accompanied by a statement from the Planning Commission as to the public purpose served by such waiver, variation, or substitution, particularly in regard to the purpose and intent of this article, this ordinance, the Zoning Ordinance, and the Comprehensive Plan.
5. No such waiver, variation, or substitution shall be detrimental to the public health, safety or welfare, orderly development of the area, sound engineering practice, or to properties located within the project impact area.
6. The Planning Commission, in its deliberation on the request, may require the submission of a formal engineering report or other related technical documentation or graphic



exhibits to support the applicant's request for waiver, variation, or substitution. At its discretion, the Planning Commission may solicit the input from a professional engineer or other consultant to assist in the review of the applicant's documentation.

7. The Town shall adopt a schedule of fees for consideration of waivers, variances and substitutions, with said fee to be paid by the applicant upon submission of a request for waiver, variance or substitution.

**L. Changes and Revisions to Preliminary Subdivision Plat and Final Subdivision Plat**

1. Changes and revisions may be made to an approved Preliminary Subdivision Plat or Final Subdivision Plat provided that prior written authorization by the Planning and Zoning Administrator has been received, except when the change has been required by the Planning Commission.
2. The changes and revisions shall be submitted and reviewed in the same manner as a Preliminary Subdivision Plat or Final Subdivision Plat, as the case may be, provided that minor changes and revisions may be approved by the Planning and Zoning Administrator.
3. A Final Subdivision Plat subject to a change or modification shall be signed by the owner or owners of the land being subdivided.

**M. Re-subdivision of Land**

1. Property may be re-subdivided to eliminate, relocate or otherwise alter a boundary line without the formal vacation of a recorded plat provided that the re-subdivision does not involve the relocation or alteration of streets, alleys, public rights of way, easements for public access, easements for utilities and public infrastructure, and easements for public use or common areas.
2. An application for the re-subdivision of land shall be submitted, reviewed and considered for approval by the Planning Commission in the same manner as a Final Subdivision Plat, provided that re-subdivisions involving minor changes and revisions may be approved by the Planning and Zoning Administrator pursuant to the requirements of a Minor Subdivision.
3. The Town Manager shall sign plats of re-subdivision.

4. The approval of a re-subdivision of land does not extend the period of validity of the Final Subdivision Plat in which the re-subdivided lot is located.

**N. Vacation of Plat and Relocation of Boundary Lines**

1. A duly recorded Final Subdivision Plat or any part thereof may be vacated, or its boundary lines may be relocated pursuant to Section 15.2-2271 through 15.2-2276 of the Code of Virginia.
2. An application for the vacation of a recorded plat shall be submitted, reviewed and considered for approval by the Planning Commission in the same manner as a Final Subdivision Plat.
3. The vacation of a recorded plat shall operate to destroy the force and effect of the recording of the plat so vacated, or any portion thereof.